UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SOPHIA GRAHAM,	§	
	§	
Plaintiff,	§	
	§	
V.	§	**CIVIL ACTION NO. 3: 04-CV-2461-B**
	§	
DALLAS INDEPENDENT SCHOOL DISTRICT, *et al.*,	§	
	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER
SANCTIONING ATTORNEY PHILLIP E. LAYER

This is a civil rights/employment discrimination action filed on November 15, 2004 by Plaintiff Sophia Graham ("Graham") against the Dallas Independent School District ("DISD") and three school officials. The conduct of Plaintiff's former counsel, Phillip E. Layer ("Layer") is the subject of this order. Specifically, the present inquiry involves whether Layer turned his client's case over to a non-lawyer research firm and then lied about his actions to the Court. The poor quality of his court filings and his in-court advocacy prompted an evidentiary hearing to determine whether sanctions were in order. Having now heard the evidence, the Court finds that Layer engaged in bad faith conduct and in so doing breached his professional obligations to his client, to this Court, and to opposing counsel. So finding, the Court sanctions Layer as set forth below.

I. BACKGROUND

Concerns about Layer's proficiency as an advocate for Graham were initially triggered by the woefully poor quality of his court filings. On February 1, 2005, Layer filed an incomprehensible and untimely response brief to Defendant Manuel Vasquez's motion to dismiss, which, rather than

engaging the merits of Vasquez's motion, did little more than parrot procedural standards, and even those recitations were in large part irrelevant, as Layer heavily relied on rules of Texas procedure[1] in this federal case.[2] This brief was followed on February 8, 2005 by a motion for "sanctions" and "contempt" filed by Layer - another poorly written effort, rife with typos and based upon inapplicable Texas procedural rules – seeking, among other things, judgment in Graham's favor, sanctions and a contempt order against Defendants DISD, Hodges and Allen for committing the unpardonable sin of failing to serve a copy of their motion for judgment on the pleadings on Layer. Only days later, Layer withdrew his motion with the explanation that those Defendants had in fact served their motion on Layer but that it had been "wrongfully filed in another client's file."

On February 18, 2005 Layer again filed what can only be described as a nonsensical brief entitled "Motion to Strike and to Dismiss or in the Alternative, Motion for More Definite Statement." In this filing, Layer moved the Court to strike Defendant Vasquez's reply brief to his motion to dismiss, ostensibly for failing to include "a [b]rief ... as required by N.D. Loc. R. Civ. P. 7.1(d)" – despite the fact that there is no such requirement with respect to reply briefs in the local rules.[3] Alternatively, he moved that Vasquez's reply be subject to Federal Rule 12(e)'s inapposite

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[1] In a later court paper Layer acknowledged that the Texas rules were "pleaded by mistake."

[2] Also, in response to Vasquez's point that Graham's pleadings failed to make clear whether Vasquez was being sued in his official or individual capacity, Layer explained that Graham's petition clearly stated that Defendants were being sued jointly and severally. Needless to say, Layer's argument demonstrates either his fundamental misunderstanding of basic legal concepts or his willingness to advance frivolous legal positions.

[3] Vasquez's *motion* to dismiss did in fact incorporate a supporting legal brief, a common practice that is acceptable under the local rules.

"more definite statement" requirement. And on April 21, 2005[4] – several weeks past due – Layer finally filed a response to Defendants DISD, Hodges and Allen's motion for judgment on the pleadings, the same day on which the Court held a hearing on that motion and Vasquez's motion to dismiss.[5]

At the hearing, Layer was unprepared and appeared unable to grasp basic legal concepts in Defendants' motions or even those contained in his own briefing. The Court granted both defense motions leaving only the Title VII case against DISD pending. Shortly after losing on the motions, Layer moved to withdraw from the case. Graham opposed his motion, alleging that Layer repeatedly failed to return her phone calls and that he allowed a non-lawyer, Bill McIntyre, to prepare and file legal papers on her behalf in the case. Graham further asserted that McIntyre had sought sexual favors in return for legal representation, and she claimed to have an audiotape recording of McIntyre propositioning her for sex. Deeply disturbed by these allegations and the dismal quality of Layer's briefing in the case, the Court scheduled a hearing on Layer's motion to withdraw for June 17, 2005.

Layer's conduct at the June 17th hearing raised additional concerns regarding his performance as Graham's counsel. Specifically, when questioned by the Court about his substandard showing at the previous hearing on the motions to dismiss, Layer stunningly insisted that he had not signed or

[4] Layer attempted to file the response two days before, on April 19 – still well past the deadline for filing a response– only to have that purported filing stricken for failure to file an electronic copy in conformance with the applicable Electronic Case Filing rules.

[5] For the sake of simplicity, the Court collectively refers to the respective motion for judgment on the pleadings filed by Defendants DISD, Hodges, and Allen, and the motion to dismiss filed by Defendant Vasquez, as "motions to dismiss".

approved any of the filings in the case – including the complaint[6] – despite being Graham's sole counsel of record. (June 17, 2005 Tr. at 3-11).[7] Questioned about court documents bearing his name, Layer told the Court "that's not my signature." (*Id.* at 7, 8). He said that he "had no idea" that a complaint had even been filed until he saw a notice of the hearing on Defendants' respective motions to dismiss. (*Id.* at 10-11). And when asked whether he had anything to do with preparing the responses to Defendants' motions to dismiss, Layer told the Court "I don't believe I did" and that "I certainly didn't do any research." (*Id.* at 7). Later in the hearing, apparently unable to adhere to a consistent version of events, Layer recollected that he had prepared a "very rough draft" of responsive pleadings to Defendants' motions to dismiss and had paid a "legal research" firm to prepare the final drafts, which he neither completed nor signed, despite the appearance of his signature on the signature block. (*Id.* at 13-14). In the end, Layer's disturbing revelations that he had not authorized or signed the pleadings bearing his signature and that a legal research firm staffed by non-lawyers had prepared and filed some if not all of the documents in this case without his

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[6] Indeed, Layer stated that his participation in the pre-suit administrative proceedings made him "more and more reluctant to want to pursue any matter in court because I was starting to discover some more facts that weren't exactly relayed to me as accurately as they could have been." (June 17, 2005 Tr. at 4). According to Layer, Graham went to the SMU Law School and drafted her pleadings herself. "Instead of coming to me for any review", Layer said, "I never got to review this, write any of this, and Your Honor, I certainly wouldn't caption this as a petition. It's a complaint in federal court." (*Id.* at 4-5). Regardless of Layer's scruples over matters of nomenclature, it is Layer's signature that appears on Plaintiff's original "petition."

[7] The following pleadings in the case purport to be filed by Layer: the initial complaint styled "Plaintiff's Original Petition", a "Certificate of Interested Persons/Disclosure Statement", filed December 1, 2004; "Plaintiff's Objection to Defendant Manny Vasquez's Motion to Dismiss for Failure to State a Claim", filed February 1, 2005; a "Joint Status Report", filed February 8, 2005; "Plaintiff's Motion to Strike and to Dismiss", filed February 18, 2005; Plaintiff Sophia Graham's Response to Defendants' Motion for Partial Judgment on the Pleadings", filed April 21, 2005; and a "Motion to Withdraw as Counsel", filed May 13, 2005.

knowledge or review prompted the Court to schedule an evidentiary hearing. The hearing was scheduled for July 27, 2005.[8]

At the evidentiary hearing, several witnesses testified, including Bill McIntyre, Christy Wade, Christina Rodriguez, and Donna Alexander Taylor of the Pattison-McIntyre Legal Research Firm. Mr. Layer and Ms. Graham also testified. Put simply, the evidence revealed – despite Layer's protestations to the contrary – that Layer had engaged McIntyre's firm to draft and file the pleadings in this case and to handle client communications with little, if any, oversight from Layer or any licensed attorney. Once the inferior quality of his work was questioned by the Court, Layer attempted to disavow responsibility for his poor showing by contending he was "commandeered" into the case by Graham who, he claims, somehow managed to get the complaint and other documents bearing his signature filed without his knowledge. However, what really occurred – and Layer's

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[8] The order setting the hearing notified Layer as follows:

> ... At the hearing the Court will hear evidence relative to Mr. Layer's performance as counsel of record for Plaintiff Sophia Graham in this case. Specifically, the Court is considering imposing some form of sanction upon Mr. Layer, including but not limited to the possible disgorgement of any legal fees received by him, or any person or entity who has received payment from Ms. Graham, for services, legal or otherwise, performed on her behalf in this matter. The Court is particularly disturbed by Mr. Layer's admission in open Court at the hearing held on June 17, 2005 that several court papers (including the complaint) in this case, purportedly bearing Mr. Layer's signature, have been filed on Ms. Graham's behalf without having been drafted, reviewed, signed, or even seen by Mr. Layer prior to their filing. This is especially troubling given that Mr. Layer is listed as the sole attorney of record representing Ms. Graham.
>
> It appears to the Court that Mr. Layer has violated the spirit if not the form of subsections (a) and (b) of Rule 11 of the Federal Rules and has also possibly violated, among others, Rules 1.01, 1.03, 3.02, 3.03, 5.03, 5.05, and 8.04 of the Texas Disciplinary Rules of Professional Conduct. Mr. Layer is hereby on notice that at the hearing he must show cause why any form of disciplinary action or sanction, including the imposition of monetary sanctions, should not be taken against him pursuant to Rule 11, Local Rule 83.8(b)(1), (2), (3) and/or (4), and/or this Court's inherent powers. (June 20, 2005 Order Setting Evidentiary Hearing and For Plaintiff's Counsel to Show Cause).

culpability for the problems – became apparent to the Court after hearing from the witnesses, particularly Bill McIntyre.

McIntyre, the non-lawyer owner of a "legal research firm" stated that he was a "legal researcher" for Mr. Layer and that he managed all of Layer's cases. (July 27, 2005 Tr. at 10-13). He described both a personal and professional relationship with Layer spanning fourteen years. (*Id.* at 9-10). He refuted Layer's statement from the prior hearing that his firm had filed documents in the case – including the complaint – without Layer's consent or knowledge, stating:

> ... Mr. Layer has always been aware of the affairs in our office that we conduct for him. We have a full staff that offers private investigators, stenographers, paralegals, and we finance litigation for attorneys. So we have always talked to the attorneys about what's going on in the litigation. Mr. Layer and I have always been on board with what was going on in Sophia Graham's case. The statements that Mr. Layer made to the Court on his last appearance in this court ... laid out an appearance to paint a pattern that we will file documents without his knowledge. That is wholly untrue. The petition, the complaint that was filed in this court, Mr. Layer participated in the amendment of this complaint. . . .

(*Id.* at 11-16).

With respect to Layer's involvement in preparing the responses to the defense motions to dismiss, McIntyre stated:

> ... Mr. Layer has always had participation, because every time a draft was made, we would notice him of the date of his deadline, and would tell him that this has to be answered by a certain time. The staff would draft an answer for him and provide an answer to him for his approval. Once he said, "Okay, file it," it was filed. If he was not there and said, "File it," Donna affixed a signature for Mr. Layer, as authorized.

(*Id.* at 18).

Other witnesses from the Pattison-McIntyre firm confirmed a close and ongoing relationship between Layer and the firm. (*Id.* at 63-65; 68-70; 73-85). Plaintiff Graham testified that she retained Layer to represent her in this case. (*Id.* at 37-38). She proceeded to describe a rocky relationship between them in which Layer essentially relinquished his professional responsibilities to non-lawyer McIntyre who dropped the ball in several major respects. (*Id.* at 35-45). Graham was not informed of court dates, misinformed about procedural obligations and, at one point, according to her, "assaulted" by McIntyre. Ultimately, she said Layer refused to return her phone calls and then "dropped her case." (*Id.* at 43-45).

For his part, by the time of the evidentiary hearing, Layer's version of events had evolved to the point that he recalled drafting Graham's responses to Defendants' motions to dismiss and reviewing them with her. (*Id.* at 49-50). When reminded that this testimony directly contradicted his previous story, he professed "I was confused, then." (*Id.* at 50). In short, his testimony was wholly unbelievable.

In summary, the clear and convincing evidence painted a disturbing picture of Layer accepting fees from Graham – only to relinquish all case responsibilities to a non-lawyer who mishandled it in several respects. Beginning with the filing of the complaint, Layer's actions kept this case in play and forced the defendants to pay large sums of money to defend themselves against a slew of phantom-authored frivolous pleadings. If this were not egregious enough, when called on his

behavior by the Court during two separate court proceedings, Layer simply lied about it. At the conclusion of the evidentiary hearing, the Court found that Layer's conduct, described above, constituted bad faith and that he was consequently subject to sanctions pursuant to the Court's inherent authority. The Court also found that Layer had violated Rule 11 in authorizing numerous court filings bearing his signature only to disclaim knowledge of them and responsibility for them when confronted by the Court. Because his malfeasant actions had initiated and sustained the case through the April hearing – causing the bulk of the defense expenditures to that point – the Court found him responsible for all Defendants' attorney's fees incurred to that date and directed the defense attorneys to submit affidavits supporting their fee requests. (July 27, 2005 Tr. at 92-100).

In the analysis that follows, the Court will specify the amount of the sanctions award and the legal authority supporting it. With one exception, the Court adheres to its July 27 ruling as to the basis for the sanctions award. Specifically, upon review of the applicable authority, the Court has determined that Rule 11(c)(2) only authorizes attorney fees awards when "imposed *on motion* ..." FED. R. CIV. P. 11(c)(2) (emphasis added); *Thornton v. Gen. Motors Corp.*, 136 F. 3d 450, 455 (5th Cir. 1998); *Divane v. Krull Elec. Co.*, 200 F.3d 1020, 1030 (7th Cir. 1999). Such awards cannot be imposed *sua sponte* by the Court. *Divane,* 200 F. 3d at 1030. Here, while Layer was given detailed notice of the nature of the sanctions hearing,[9] it was convened *sua sponte* and thus cannot be the vehicle for an award of attorneys fees under Rule 11. Nonetheless, the Court's inherent authority

[9] *See* note 8, *supra.*

to sanction bad faith conduct provides a sound basis for an attorney's fees award in this case as seen below.

II. ANALYSIS

Federal courts have the inherent authority to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-45 (1991) (citations omitted). Toward that end, federal courts are empowered to sanction bad faith conduct occurring during the litigation. *Elliott v. Tilton*, 64 F.3d 215, 216 (5th Cir. 1995). It goes without saying that lying to the court constitutes bad faith. *See generally*, *Chambers*, 501 U.S. at 42, 46, 50-51 (upholding the district court's use of its inherent authority to sanction bad faith conduct which included "misleading and lying to the court."). So also is the unauthorized practice of law sanctionable under the court's inherent authority. *United States v. Johnson*, 327 F.3d 554, 560 (7th Cir. 2003) ("considering the serious threat that the unauthorized practice of law poses both to the integrity of the legal profession and to the effective administration of justice, resort to the inherent powers ... is an appropriate remedial measure."). Coextensive with the inherent authority to mete out sanctions is the requirement that these implied powers be exercised with restraint and discretion. *Chambers*, 501 U.S. at 44 (citing *Roadway Express v. Piper*, 447 U.S. 752, 764 (1980)). Inherent powers "may be exercised only if essential to preserve the authority of the court and the sanction must employ" the least possible power adequate to the purpose to be achieved. *Natural Gas Pipeline of Am. v. Energy Gathering Inc.*, 86 F. 3d 464, 467 (5th Cir. 1996) (citations omitted). In other words,

the sanction must "be tailored to fit the particular wrong." *Topalian v. Ehrman*, 3 F.3d 931, 936 n. 5 (5th Cir. 1993) (extending the analytical principles for determining sanctions under Rule 11 "across-the-board" to all of the district court's sanction powers). Appropriate factors to consider in determining the amount of a sanction award include: (1) the precise conduct being punished; (2) the precise expenses caused by the violation; (3) the reasonableness of the fees imposed; and (4) the least severe sanction adequate to achieve the purpose of the rule relied upon to impose the sanction. *Id.* at 936. Under appropriate circumstances, the sanction may include, *inter alia*, the entire amount of attorney's fees incurred as a result of the bad faith conduct. *Chambers*, 501 U.S. at 55.

The Court finds that the full amount of attorney's fees incurred through the date of the July 27, 2005 hearing to be least severe sanction appropriate under the circumstances for the reasons that follow. Reduced to its essence, the sanctionable conduct here is two-fold. First is Layer's engagement of non-lawyer McIntyre and his firm to initiate and sustain this case causing the defendants sizable expenditures of time and money. The defendants were required to file motions to dismiss, respond to McIntyre and/or Layer's ill-conceived filings and appear at three separate hearings before this Court. All this because Layer hired McIntyre's firm to engage in the unauthorized practice of law to prosecute claims which, to Layer's mind at least, were of dubious legal merit. (June 17, 2005 Tr. at 4). While Layer may have been "reluctant to really get on the bandwagon with filing any frivolous claims after what [he] learned going through the administrative process of the grievance proceedings", the sad truth is that he ultimately hopped on the bandwagon

and took Defendants, his client, and the Court for a ride. *Id.* By the time of the July 27th evidentiary hearing, there were sixty-nine separate docket entries in this case in pursuit of claims which Layer himself feared were "frivolous."[10] (*Id.*). The precise amount of fees caused by Layer's actions is necessarily the entire amount of fees incurred by the defendants. The Court so finds because – regardless of the actual merits of this case – in this instance none of the Defendants' fees would have been incurred absent the actions of Layer and his hiring of the McIntyre firm.

The second category of sanctionable conduct involves Layer's blatant misrepresentations to the Court. Not only did Layer breach his duty as an officer of the court, his conduct prompted two hearings focusing on his actions and a required substantial expenditure of this Court's resources in addressing his conduct. Sanctions are in order so that the Court may vindicate itself and compensate Defendants. *See Chambers*, 501 U.S. at 57 (finding it "within the [district] court's discretion to vindicate itself and compensate NASCO by requiring Chambers to pay for all attorney's fees."). Because Layer's falsehoods to the Court are inextricably intertwined with his utilization of the McIntyre firm – had he not lied, his scheme would have been discovered and stopped – the Court finds that this conduct also justifies the full award of attorney's fees. Id. at 46 ("[I]f a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party[.]") (citations omitted).

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[10] While many of the original claims involved in this case can rightly be characterized as "frivolous", the Court does not opine on the merit, or lack thereof, of Graham's extant Title VII claims against the DISD.

So far as the amount of fees to be awarded, DISD, Hodges and Allen's attorneys have submitted an affidavit supporting $49,388.36 in fees and costs and Vasquez's attorneys have likewise submitted a request for $21,604.35 in fees and costs. The combined requests total $70,224.85. Layer filed objections to each submission. In assessing the reasonableness of the fees and costs in the sanctions context, the Court is not required to undertake the analysis described in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *NASCO v. Calcasieu Television and Radio, Inc.*, 124 F.R.D. 120, 143 (W.D. La. 1989) (citations omitted). Rather, the court may rely upon its own factual determination in deciding the proper fee amount. *Hornbuckle v. Arco Oil & Gas Co.*, 732 F.2d 1233, 1238 (5th Cir. 1984).

Here, Layer did not challenge the reasonableness of the hourly rate, instead he objected that DISD had already paid Defendants' law firms – a point Defendants do not dispute.[11] The Court finds that the attorneys' affidavits support a finding that the billing rates and amounts requested are reasonable and are supported by the record and this Court's extensive first-hand involvement in this case. Accordingly, the Court finds that the appropriate sanction award in this case is $70,224.85 in fees and costs to be paid to the entity presently out-of-pocket for these sums.

Finally, the Court examines whether the sanction award is the least severe that is adequate to the purpose underlying the court's inherent authority. It would be difficult to overstate the

[11] Because it is undisputed that DISD has already paid the full amount of legal fees to respective defense counsel, the Court will order that the fee award be paid directly to DISD, the party that is presently out of pocket with respect to the fees and costs.

importance of deterring the unauthorized practice of law. "Any unauthorized practice of law impacting federal court proceedings necessarily raises the specter of interference with that court's function in a manner effectively indistinguishable from fraud or deceit." *Johnson*, 327 F. 3d at 561. The record here shows that Layer had serious misgivings about the merits of this case before its filing, yet he forged ahead with its prosecution out of a professed sense of fealty to his client. In the process, Layer employed non-attorneys to drive the case with little or no supervision or involvement on his part. And when taken to task for his shoddy performance, Layer attempted to play the role of an unwitting victim, instead blaming both his client and his friend and colleague, McIntyre, for going forward with this case, all the while making false representations to the Court. To leave even a glimmer of hope that such conduct will be tolerated by the Court threatens the precious perception of a fair adversary system as viewed through the eyes of clients, opposing counsel and the judiciary. Shadowy figures preying on unsuspecting litigants must receive a loud and clear message when they are caught - STOP or else. Anything less than the full fee award here would send a message that there is more egregious conduct than pursuing "frivolous" claims, abandoning one's client, and lying to a judicial tribunal – there is not. For these reasons the Court awards the full amount of costs and fees expended by Defendants in this case up to and including the date of the July 27, 2005 evidentiary hearing.

III. CONCLUSION

As set forth above, the Court finds that Layer has knowingly permitted or participated in the

filing of frivolous pleadings, has abdicated his professional responsibility to his client, to opposing counsel, and to the Court by allowing non-lawyers to draft and file pleadings bearing his signature without an appropriate level of oversight, and has made false representations to this Court. For those reasons, the Court ORDERS that Layer pay Defendants' attorney's fees incurred in this case from the date of its filing to July 27, 2005 in the amount of $70,224.85. The Court ORDERS that this amount shall be made payable to DISD and be paid within 30 days of the date of this order. The Clerk is directed to send copy of this order to the Office of the Chief Disciplinary Counsel of the State Bar of Texas.

SO ORDERED.

SIGNED January 10, 2006

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE